

19-C-02975-S1
6/5/2019 4:48 PM
CLERK OF STATE COURTIN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

Allycia Poblete and)	
Alyx Poblete,)	
)	
Plaintiffs,)	
)	CIVIL ACTION FILE NO.
v.)	
)	19-C-02975-S1
Ollie's Bargain Outlet, Inc. and)	
Deputy Austin Shippey, in his)	
individual capacity,)	
)	
Defendants.)	JURY TRIAL DEMANDED
)	

**ANSWER OF DEFENDANT OLLIE'S BARGAIN OUTLET, INC. TO
PLAINTIFFS' COMPLAINT FOR DAMAGES**

COMES NOW OLLIE'S BARGAIN OUTLET, INC. ("Ollie's") and hereby files and serves its Answer to Plaintiff's Complaint for Damages ("Complaint"), and states as follows:

FIRST DEFENSE

Without waiving any defense at law or in equity, Ollie's answers the individually numbered paragraphs of Plaintiffs' Complaint as follows:

Except as hereinafter specifically admitted, each and every allegation of Plaintiff's Complaint is denied.

PARTIES

1.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of Plaintiffs' Complaint and, therefore, denies the same.

2.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of Plaintiffs' Complaint and, therefore, denies the same.

3.

Ollie's admits the allegations of Paragraph 3 of Plaintiffs' Complaint.

4.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of Plaintiffs' Complaint and, therefore, denies the same.

5.

Ollie's admits the allegations of Paragraph 5 of Plaintiffs' Complaint pertaining specifically to Ollie's, but Ollie's lacks knowledge or information

sufficient to form a belief as to the truth of the allegations of Paragraph 5 pertaining to Deputy Shippey, and therefore denies the same.

6.

Paragraph 6 of Plaintiffs' Complaint states a legal conclusion, therefore, no response is necessary; however, Ollie's nevertheless denies the same.

FACTS GIVING RISE TO PLAINTIFFS' CLAIMS

7.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of Plaintiffs' Complaint and, therefore, denies the same.

8.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of Plaintiffs' Complaint and, therefore, denies the same.

9.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of Plaintiffs' Complaint and, therefore, denies the same.

10.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of Plaintiffs' Complaint and, therefore, denies the same.

11.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 of Plaintiffs' Complaint and, therefore, denies the same.

12.

Ollie's denies the allegations of Paragraph 12 of Plaintiff's Complaint.

13.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 of Plaintiffs' Complaint and, therefore, denies the same.

14.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14 of Plaintiffs' Complaint and, therefore, denies the same.

15.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15 of Plaintiffs' Complaint and, therefore, denies the same.

16.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16 of Plaintiffs' Complaint and, therefore, denies the same.

17.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 of Plaintiffs' Complaint and, therefore, denies the same.

18.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18 of Plaintiffs' Complaint and, therefore, denies the same.

19.

Ollie's denies the allegations of Paragraph 19 of Plaintiffs' Complaint.

20.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20 of Plaintiffs' Complaint and, therefore, denies the same.

21.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21 of Plaintiffs' Complaint and, therefore, denies the same.

22.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22 of Plaintiffs' Complaint and, therefore, denies the same.

23.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23 of Plaintiffs' Complaint and, therefore, denies the same.

24.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24 of Plaintiffs' Complaint and, therefore, denies the same.

25.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 25 of Plaintiffs' Complaint and, therefore, denies the same.

26.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 26 of Plaintiffs' Complaint and, therefore, denies the same.

27.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 27 of Plaintiffs' Complaint and, therefore, denies the same.

28.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 28 of Plaintiffs' Complaint and, therefore, denies the same.

Consequences of Plaintiffs' Imprisonment

29.

Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 29 of Plaintiffs' Complaint and, therefore, denies the same.

30.

Ollie's denies the allegations of Paragraph 30 of Plaintiffs' Complaint.

31.

Ollie's denies the allegations of Paragraph 31 of Plaintiffs' Complaint.

CLAIMS FOR RELIEF

COUNT I

False Imprisonment under O.C.G.A. § 51-7-20

(By all Plaintiffs against Ollie's)

32.

In response to Paragraph 32 of Plaintiffs' Complaint, Ollie's incorporates by reference its responses in all preceding paragraphs as if fully set forth herein.

33.

Ollie's denies the allegations of Paragraph 33 of Plaintiffs' Complaint.

34.

Ollie's denies the allegations of Paragraph 34 of Plaintiffs' Complaint.

35.

Ollie's denies the allegations of Paragraph 35 of Plaintiffs' Complaint.

36.

Ollie's denies the allegations of Paragraph 36 of Plaintiffs' Complaint.

37.

Ollie's denies the allegations of Paragraph 37 of Plaintiffs' Complaint.

38.

Ollie's denies the allegations of Paragraph 38 of Plaintiffs' Complaint.

39.

Ollie's denies the allegations of Paragraph 39 of Plaintiffs' Complaint.

COUNT II

Tortious Misconduct Under Georgia Law

(By all Plaintiffs against Ollie's)

40.

In response to Paragraph 40 of Plaintiffs' Complaint, Ollie's incorporates by reference its responses in all preceding paragraphs as if fully set forth herein.

41.

Ollie's admits the allegations of Paragraph 41 of Plaintiffs' Complaint.

42.

Ollie's denies the allegations of Paragraph 42 of Plaintiffs' Complaint.

43.

Ollie's denies the allegations of Paragraph 43 of Plaintiffs' Complaint.

44.

Ollie's denies the allegations of Paragraph 44 of Plaintiffs' Complaint.

COUNT III

Racial Discrimination under 42 U.S.C. § 1981

(By all Plaintiffs against Ollie's)

45.

In response to Paragraph 45 of Plaintiffs' Complaint, Ollie's incorporates by reference its responses in all preceding paragraphs as if fully set forth herein.

46.

Ollie's denies the allegations of Paragraph 46 of Plaintiffs' Complaint.

47.

Ollie's denies the allegations of Paragraph 47 of Plaintiffs' Complaint.

48.

Ollie's denies the allegations of Paragraph 48 of Plaintiffs' Complaint.

49.

Ollie's denies the allegations of Paragraph 49 of Plaintiffs' Complaint.

50.

Ollie's denies the allegations of Paragraph 50 of Plaintiffs' Complaint.

51.

Ollie's denies the allegations of Paragraph 51 of Plaintiffs' Complaint.

52.

Ollie's denies the allegations of Paragraph 52 of Plaintiffs' Complaint.

53.

Ollie's denies the allegations of Paragraph 53 of Plaintiffs' Complaint.

54.

Ollie's denies the allegations of Paragraph 54 of Plaintiffs' Complaint.

55.

Ollie's denies the allegations of Paragraph 55 of Plaintiffs' Complaint.

COUNT IV

Violation of the Fourth Amendment under 42 U.S.C. § 1983

(By all Plaintiffs against Defendant Shippey)

56.

In response to Paragraph 56 of Plaintiffs' Complaint, Ollie's incorporates by reference its responses in all preceding paragraphs as if fully set forth herein.

57.

Paragraph 57 of Plaintiffs' Complaint contains allegations that do not pertain to Ollie's, therefore, no response is necessary. To the extent a response is required, Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 57 of Plaintiffs' Complaint and, therefore, denies the same.

58.

Paragraph 58 of Plaintiffs' Complaint contains allegations that do not pertain to Ollie's, therefore, no response is necessary. To the extent a response is required, Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 58 of Plaintiffs' Complaint and, therefore, denies the same.

59.

Paragraph 59 of Plaintiffs' Complaint contains allegations that do not pertain to Ollie's, therefore, no response is necessary. To the extent a response is required, Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 59 of Plaintiffs' Complaint and, therefore, denies the same.

60.

Paragraph 60 of Plaintiffs' Complaint contains allegations that do not pertain to Ollie's, therefore, no response is necessary. To the extent a response is required, Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 60 of Plaintiffs' Complaint and, therefore, denies the same.

61.

Paragraph 61 of Plaintiffs' Complaint contains allegations that do not pertain to Ollie's, therefore, no response is necessary. To the extent a response is required, Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 61 of Plaintiffs' Complaint and, therefore, denies the same.

62.

Paragraph 62 of Plaintiffs' Complaint contains allegations that do not pertain to Ollie's, therefore, no response is necessary. To the extent a response is required, Ollie's lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 62 of Plaintiffs' Complaint and, therefore, denies the same.

COUNT V

Attorneys' Fees under under 42 U.S.C. § 1988 and O.C.G.A. § 13-6-11

(By all Plaintiffs against all Defendants)

63.

In response to Paragraph 63 of Plaintiffs' Complaint, Ollie's incorporates by reference its responses in all preceding paragraphs as if fully set forth herein.

64.

Ollie's denies the allegations of Paragraph 64 of Plaintiffs' Complaint.

65.

Ollie's denies the allegations of Paragraph 65 of Plaintiffs' Complaint.

REQUEST FOR RELIEF

Further Ollie's denies the WHEREFORE paragraph, and all sub-paragraphs thereof, of the last unnumbered paragraph of Plaintiffs' Complaint. In addition, Ollie's denies any and all counts, paragraphs, or sub-paragraphs of Plaintiffs' Complaint not specifically referred to herein by number.

SECOND DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief can be granted with the result that Ollie's has no liability in this matter.

THIRD DEFENSE

Ollie's denies that any of its actions or omissions caused Plaintiffs to sustain any injuries that are actionable under federal or state law.

FOURTH DEFENSE

There may be a lack of joinder of one or more parties who should or must be joined and, without the joinder of these proper parties, complete relief cannot be accorded among those already attempted to be made parties to this civil action.

FIFTH DEFENSE

To the extent that Plaintiffs have sustained any injuries as a result of any act or omission on the part of Ollie's, Plaintiffs failed to take reasonable measures to mitigate their damages.

SIXTH DEFENSE

To the extent Plaintiffs are seeking punitive damages against Ollie's, Plaintiffs have not pled a punitive damages claim with the requisite particularity.

SEVENTH DEFENSE

Plaintiffs cannot recover punitive damages against Ollie's because they cannot show by clear and convincing evidence that the Ollie's actions or omissions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire

want of care which would raise the presumption of conscious indifference to consequences as defined by O.C.G.A. § 51-12-5.1(b).

EIGHTH DEFENSE

Plaintiffs' claims under 42 U.S.C. § 1981 and/or 42 U.S.C. § 1983 fail because Plaintiffs cannot establish that any of their alleged constitutional injuries were caused by any of Ollie's customs, policies, or practices, acts, or omissions.

NINTH DEFENSE

Plaintiffs' claims under 42 U.S.C. § 1981 and/or 42 U.S.C. § 1983 fail because Plaintiffs cannot establish that Ollie's acted with deliberate indifference toward known instances of unconstitutional conduct.

TENTH DEFENSE

Plaintiffs are barred from bringing the alleged causes of action due to the doctrines of estoppel, waiver, laches, unclean hands, and assumption of the risk.

ELEVENTH DEFENSE

Ollie's reserves the right to raise additional affirmative defenses as may be discovered during the course of these proceedings.

WHEREFORE, having responded fully to Plaintiffs' Complaint, Defendant Ollie's Bargain Outlet, Inc. prays that judgment be entered in its favor on all claims raised in Plaintiffs' Complaint with costs to be borne by Plaintiffs.

This 5th day of June, 2019.

/s/ Sanjay Ghosh
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*Attorneys for Defendant Ollie's Bargain
Outlet, Inc.*

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing **ANSWER OF DEFENDANT OLLIE'S BARGAIN OUTLET, INC. TO PLAINTIFFS' COMPLAINT FOR DAMAGES** using the Gwinnett County e-file system which will automatically provide service upon the following counsel of record:

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This 5th day of June, 2019.

/s/ Sanjay Ghosh
Sanjay Ghosh
Georgia Bar. No. 141611